

1 H.859

2 Introduced by Committee on Education

3 Date:

4 Subject: Education; special education; funding

5 Statement of purpose of bill as introduced: This bill proposes to require that
6 special education funding by the State is paid to supervisory unions or school
7 districts, based on where the related services are provided; make an
8 appropriation for the University of Vermont to study the feasibility of
9 implementing the census block model for special education funding and direct
10 the University of Vermont to conduct this study; make an appropriation for up
11 to 10 supervisory unions, supervisory districts, or unified union districts to
12 retain the District Management Council for the provision of special education
13 consulting services; and establish a new staff position in the Agency of
14 Education.

15 An act relating to special education

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 ~~*** Payment of Special Education Funding to Supervisory Unions ***~~

3 Sec. 1. 16 V.S.A. chapter 101 is amended to read:

4 CHAPTER 101. SPECIAL EDUCATION

5 Subchapter 1. General Provisions

6 * * *

7 § 2948. STATE AID

8 (a) For the payment of general State aid, children with disabilities shall be
9 counted in the same manner as children who do not have disabilities.

10 (b) [Repealed.]

11 (c) Each ~~school district~~ supervisory union shall receive an essential early
12 education grant each school year. Grants shall be distributed according to the
13 estimated number of children from three through five years of age. The State
14 Board by rule shall encourage coordination of services and may set other terms
15 of the grant. Each ~~district~~ supervisory union shall be responsible for the
16 remainder of the costs of providing necessary services under section 2956 of
17 this title. Annually, for each following fiscal year, the essential early education
18 grant shall be increased by the most recent cumulative price index, as of
19 November 15, for State and local government purchases of goods and services
20 from fiscal year 2002 through that following fiscal year, as provided through
21 the State's participation in the New England Economic Project.

22 (d), (e) [Repealed.]

1 ~~(f) If a student is being provided education or special education or both in a~~
2 school operated by the Department of Corrections, the Department of
3 Corrections shall serve the student as if the Department were the school district
4 of residence of the student.

5 (g) Notwithstanding any law to the contrary, a child with a disability who is
6 residing in a State school, hospital, or community residential facility or in a
7 State-approved private residential facility shall be provided special education
8 in accordance with this chapter by the ~~school district~~ supervisory union in
9 which the facility is located; provided, however, that this special education
10 may be directly provided by the facility in which the child resides when the
11 child's individualized education program and treatment plans indicate that the
12 facility is the most appropriate educational placement for the child. Programs
13 of special education provided by a facility described in this subsection shall be
14 subject to the approval of the Secretary.

15 (h)-(j) [Repealed.]

16 (k) For the costs of students in the custody of the Department of
17 Corrections, the Secretary of Education shall pay for the costs of special
18 education in accordance with the provisions of 28 V.S.A. § 120.

19 (l) [Repealed.]

20 (m) All other State aid to ~~school districts and~~ supervisory unions shall be
21 set forth in subchapter 2 of this chapter.

1 ~~(n) If a student is being provided education or special education, or both in~~
2 a school operated by the Department for Children and Families, the funding
3 and provision of services shall be the responsibility of the Department for
4 Children and Families and special education procedural responsibility shall be
5 the responsibility of the supervisory union for the school district of residence
6 of the student's parent, parents, or guardian.

7 § 2949. RECIPROCAL AGREEMENTS WITH OTHER STATES

8 * * *

9 § 2950. STATE-PLACED STUDENTS

10 (a) ~~School-district~~ Supervisory Union reimbursement. The supervisory
11 union in which there is a school district responsible for educating a
12 State-placed student under section 1075 of this title may claim and the
13 Secretary shall reimburse 100 percent of all special education costs for the
14 student, including costs for mainstream services. As a condition of receiving
15 this reimbursement, the ~~district~~ supervisory union shall provide documentation
16 in support of its claim, sufficient to enable the Secretary to determine whether
17 to recommend appropriate cost-saving alternatives. The Secretary may
18 approve any costs incurred in educating a State-placed student who is not
19 eligible for special education that are incurred due to the special needs of the
20 student, and, if approved, the Secretary shall pay those costs. When a State
21 agency places and registers a student in a new district, the district and the

1 ~~supervisory union of which it is a member may request and the Agency of~~
2 Education, or the agency that placed the student, or both, shall provide prompt
3 consultative and technical assistance to the receiving district and the
4 supervisory union.

5 * * *

6 § 2957. SPECIAL EDUCATION ADMINISTRATIVE AND JUDICIAL
7 APPEALS; LIMITATIONS

8 * * *

9 (e) Except as provided in 20 U.S.C. § 1412(a)(10)(C) or unless a court or
10 hearing officer determines otherwise, where a unilateral placement has been
11 made without offering the supervisory union for the school district of residence
12 ~~being offered~~ a reasonable opportunity to evaluate the child and to develop an
13 individualized education program, reimbursement may not be sought for any
14 costs incurred before the ~~school district~~ supervisory union is offered such an
15 opportunity.

16 § 2958. RESIDENTIAL PLACEMENT REVIEW TEAM; RESIDENTIAL
17 PLACEMENTS

18 (a) A school district shall notify the parents and the Secretary when it
19 believes residential placement is a possible option for inclusion in a child's
20 individualized education program.

1 ~~(b) The Secretary may establish from within the Agency a Residential~~

2 Placement Review Team. At the discretion of the Secretary, other persons not
3 employed by the Agency may be appointed to serve on the Team. The Team
4 shall make every effort to assist ~~school districts~~ supervisory unions and parents
5 in understanding the range of educational options available as early as possible
6 in the planning process for the child. The Team shall:

7 (1) advise ~~school districts~~ supervisory unions on alternatives to
8 residential placement;

9 (2) review each individualized education program calling for residential
10 placement of a student to consider whether the student can be educated in a
11 less restrictive environment;

12 (3) assist ~~school districts~~ supervisory unions in locating cost-effective
13 and appropriate residential facilities where necessary;

14 (4) request a new individualized education program where it believes
15 that appropriate alternatives to residential placement are available; and

16 (5) offer mediation as a means of resolving disputes relating to the need
17 for residential placement or the particular residential facility recommended for
18 a child with a disability.

19 (c) The State Board shall by rule establish policies and procedures for the
20 operations of the Residential Placement Review Team. The rules shall be
21 consistent with federal law and, at minimum, shall include the following:

1 ~~(1) provision for the Secretary to initiate a due process proceeding to~~
2 challenge the need for residential placement where the team believes that a less
3 restrictive educational placement is both available and appropriate for the child
4 with a disability, and to reimburse the ~~school district~~ supervisory union and the
5 parents or guardian of the child for reasonable costs and attorney's fees in the
6 event the Secretary does not prevail;

7 (2) provision for technical assistance, a plan for correction, or
8 withholding of funds under this section where a ~~school district~~ supervisory
9 union places a child in a residential facility more expensive than an available
10 and appropriate alternative residential facility; however, such withholding of
11 funds shall not exceed the difference between the cost of the two facilities and
12 the rule shall provide an opportunity for appeal of the withholding; and

13 (3) procedures and timelines to ensure that residential placement of a
14 child with disabilities is not delayed or disrupted so as to adversely affect
15 the child.

16 (d) Whenever a residential placement is determined to be necessary and
17 appropriate for a child with a disability, the Residential Placement Review
18 Team shall include in the child's individualized education program goals and
19 objectives designed to reintegrate the child into a local school district.

20 (e) Costs for residential placement shall be reimbursed under subchapter 2
21 of this chapter only if the residential facility is approved by the State Board for

1 ~~the purposes of providing special education and related services to children~~
2 with disabilities.

3 § 2959. RULEMAKING; MEDIATION

4 (a) The State Board shall adopt rules governing the determination of a
5 child's eligibility for special education, accounting and financial reporting
6 standards, program requirements, procedural requirements, and the
7 identification of the ~~district~~ supervisory union or agency responsible for each
8 child with a disability.

9 (b) Subject to rules established by the State Board, the Secretary shall offer
10 mediation to parents, children with disabilities, and districts, supervisory
11 unions, and agencies involved in special education disputes.

12 § 2959a. EDUCATION MEDICAID RECEIPTS

13 (a) It is the intent of the General Assembly that the State of Vermont shall
14 maximize its receipt of federal Medicaid dollars available for reimbursement
15 of medically related services provided to students who are Medicaid eligible.

16 It is further the intent that:

17 (1) each supervisory union identify special education and other students
18 eligible for Medicaid reimbursement and, to the extent possible, submit
19 Medicaid bills for services reimbursement;

1 ~~(2) the Agencies of Education and of Human Services work with local~~
2 school districts to maximize reimbursements, including services to non-IEP
3 students.

4 (b) A Medicaid Reimbursement Special Fund is established within the
5 Agency of Education. Funds received by the State under this section shall be
6 transferred to the Medicaid Reimbursement Special Fund. The Fund receipts
7 shall be allocated in accordance with this section.

8 (c) At least annually, the Secretary of Education shall pay to each
9 supervisory union submitting Medicaid bills under this section, 50 percent of
10 the reimbursed funds generated by the supervisory union's bill, excluding
11 claims generated by State-placed students. Unless the supervisory union has
12 agreed to use the funds to operate a supervisory unionwide program or to
13 distribute the funds in a different manner, upon receipt, the supervisory union
14 shall distribute the funds to its member school districts based on how the funds
15 were generated. The Secretary may withhold payment due a ~~school district~~
16 supervisory union pursuant to section 2950 of this title for a Medicaid-eligible
17 State-placed student if the ~~school district~~ supervisory union has not submitted a
18 Medicaid claim for reimbursable services for that student.

19 (d) If the amount of Medicaid reimbursement funds received for services
20 provided in the prior State fiscal year exceeds \$25,000,000.00, in addition to
21 the 50 percent of the funds paid to supervisory unions submitting Medicaid

1 ~~bills, 25 percent of the amounts in excess of the \$25,000,000.00 shall be paid~~
2 into an incentive fund created in the Agency of Education. These funds shall
3 be used for an incentive payment to supervisory unions with student
4 participation rates of over 80 percent in accordance with a formula to be
5 developed by the Agency, in consultation with the Vermont Superintendents
6 Association. For any incentive payments made subsequent to fiscal year 2007,
7 the \$25,000,000.00 threshold of this subsection shall be increased by the
8 percentage increase of the most recent New England Economic Project
9 Cumulative Price Index, as of November 15, for state and local government
10 purchases of goods and services from fiscal year 2005 through the fiscal year
11 for which the payment is being determined, plus an additional one-tenth of one
12 percent.

13 (e) ~~School districts~~ Supervisory unions shall use funds received under this
14 section to pay for reasonable costs of administering the Medicaid claims
15 process, and school districts or supervisory unions shall use funds received
16 under this section for prevention and intervention programs in prekindergarten
17 through grade 12. The programs shall be designed to facilitate early
18 identification of and intervention with children with disabilities and to ensure
19 all students achieve rigorous and challenging standards approved and adopted
20 by the State Board or locally adopted standards. A ~~school district~~ supervisory
21 union shall provide annual written justification to the Secretary of Education of

1 ~~the use of how it or its member districts used the funds. Such annual~~
2 submission shall show how the funds' use is expressly linked to those
3 provisions of the ~~school district's~~ supervisory union's action plan that directly
4 relate to improving student performance. A ~~school district~~ supervisory union
5 shall include in its annual report the amount of the prior year's Medicaid
6 reimbursement revenues and the use of Medicaid funds consistent with the
7 purposes set forth in this subsection.

8 (f) Up to 30 percent of Medicaid reimbursements received under this
9 section shall be available for administrative costs of the Agencies of Education
10 and of Human Services related to the collection, processing, and reporting of
11 education Medicaid reimbursements and statewide programs. The Secretaries
12 of Education and of Human Services shall expend monies from the Fund only
13 as appropriated by the General Assembly.

14 (g) Remaining reimbursed funds shall be deposited into the Education
15 Fund.

16 * * *

17 Subchapter 2. Aid for Special Education and Support Services

18 § 2961. STANDARD MAINSTREAM BLOCK GRANTS

19 (a) Each ~~town school district, city school district, union school district,~~
20 ~~unified union school district, incorporated school district, and the member~~
21 ~~school districts of an interstate school district~~ supervisory union shall be

1 ~~eligible to receive a standard mainstream block grant each school year. The~~
2 mainstream block grant shall be equal to the supervisory union's mainstream
3 salary standard multiplied by 60 percent.

4 (b) ~~The district,~~ supervisory union shall expend all such assistance for
5 special education services or for remedial or compensatory services in
6 accordance with its service plan as required under section 2964 of this title. It
7 shall likewise expend, from local funds, an amount not less than 40 percent of
8 its mainstream salary standard for special education.

9 (c) As used in this section:

10 (1) "Mainstream salary standard" means:

11 (A) the ~~district's~~ supervisory union's full-time equivalent staffing for
12 special education for the preceding year multiplied by the average special
13 education teacher salary in the State for the preceding year; plus

14 (B) ~~its share, prorated according to average daily membership among~~
15 ~~the member districts of the supervisory union, of an amount equal to the~~
16 average special education administrator salary in the State for the preceding
17 year, plus, for any supervisory union ~~or supervisory district~~ with member
18 districts which have in the aggregate more than 1,500 average daily
19 membership, ~~the school district's prorated share of a fraction of an additional~~
20 full-time equivalent salary for a special education administrator, the numerator
21 of which is the aggregate average daily membership ~~in~~ of the supervisory

1 ~~union or supervisory district union's member districts minus 1,500, and the~~
2 denominator of which is the aggregate average daily membership of member
3 districts in the largest supervisory union ~~or supervisory district~~ in the State
4 minus 1,500.

5 (2) "Full-time equivalent staffing" means 9.75 special education
6 teaching positions per 1,000 average daily membership.

7 (d) If in any fiscal year, a ~~district that maintains a school~~ supervisory union
8 in which a school is maintained does not expend an amount equal to its
9 mainstream salary standard on special education expenditures, the ~~district~~
10 supervisory union may expend the balance, including the matching funds, to
11 provide support and remedial services pursuant to section 2902 or 2903 of this
12 title. A ~~district~~ supervisory union choosing to expend funds in this way shall
13 submit a report describing the services provided and their costs with the final
14 financial report submitted under section 2968 of this title.

15 § 2962. EXTRAORDINARY SERVICES REIMBURSEMENT

16 (a) Except as otherwise provided in this subchapter, extraordinary services
17 reimbursement shall be payable, based on where the related cost is incurred, to
18 ~~each~~ a town school district, city school district, union school district, unified
19 union school district, incorporated school district, the member school districts
20 of an interstate school district, and unorganized town or gore or to a
21 supervisory union.

1 ~~(b) The amount of extraordinary services reimbursement provided to each~~
2 district or supervisory union shall be equal to 90 percent of its extraordinary
3 special education expenditures.

4 (c) As used in this subchapter, "extraordinary special education
5 expenditures" means a school district's or supervisory union's allowable
6 expenditures that for any one child exceed \$50,000.00 for a fiscal year. In this
7 subsection, child means a student with disabilities who is three years of age or
8 older in the current school year. The State Board shall define allowable
9 expenditures that shall include any expenditures required under federal law,
10 and any costs of mediation conducted by a mediator who is approved by the
11 Secretary.

12 (d) [Repealed.]

13 § 2963. SPECIAL EDUCATION EXPENDITURES REIMBURSEMENT

14 (a) ~~Each~~ Based on where the related cost is incurred, each town school
15 district, city school district, union school district, unified union school district,
16 incorporated school district, the member school districts of an interstate school
17 district, and unorganized town or gore or supervisory union shall receive a
18 special education expenditures reimbursement grant each school year.

1 ~~(b) The amount of a school district's or supervisory union's special~~
2 education expenditures reimbursement shall be equal to the total of its special
3 education expenditures multiplied by the reimbursement rate for that year.

4 * * *

5 § 2963a. EXCEPTIONAL CIRCUMSTANCES

6 (a) In lieu of reimbursement under section 2963 of this title, the Secretary
7 shall reimburse a ~~school district~~ supervisory union for 80 percent of the
8 following expenditures:

9 (1) Costs not eligible for reimbursement under section 2962 of this title
10 for each student causing the ~~school district~~ supervisory union to be eligible for
11 extraordinary services reimbursement pursuant to that section. However, in
12 order for a ~~school district~~ supervisory union to be eligible for reimbursement
13 under this section, the total costs of the ~~district~~ supervisory union eligible for
14 extraordinary services reimbursement must equal or exceed 15 percent of the
15 total costs eligible for ~~state~~ State assistance under sections 2961, 2962, and
16 2963 of this title.

17 (2) The costs incurred by the ~~school district~~ supervisory union in placing
18 and maintaining a student in a program operated by the Vermont Center for the
19 Deaf and Hard of Hearing.

20 (b) An eligible ~~school district~~ supervisory union may apply to the Secretary
21 to receive reimbursement under this section. The Secretary shall award

1 ~~reimbursement to a school district supervisory union under this section if the~~
2 Secretary makes a determination that the ~~school district~~ supervisory union
3 considered all the cost-effective and appropriate available alternatives for
4 placement and programs for students before incurring these costs. A decision
5 of the Secretary shall be final.

6 § 2964. SERVICE PLAN

7 (a) As a condition of receiving assistance under this subchapter, a
8 supervisory union shall file a service plan with the Secretary annually on or
9 before October 15. The service plan shall contain the anticipated special
10 education expenditures for the following school year. The plan shall be in a
11 form prescribed by the Secretary and shall include information on services
12 planned and anticipated expenditures.

13 (b) If a supervisory union fails to file a service plan by October 15, the
14 Secretary may withhold any funds due the supervisory district ~~or school~~
15 ~~districts~~ under this title until a service plan is filed and accepted by the
16 Secretary as properly completed.

17 § 2965. WITHHOLDING OF AID

18 If a ~~district~~ supervisory union or agency fails to meet its legally established
19 obligations toward a child with a disability or the child's parent, and as a result
20 the Agency of Education incurs costs to meet these obligations beyond those
21 otherwise incurred under this chapter, the Secretary shall withhold the amount

1 ~~of funds incurred from any grants due the district supervisory union or agency~~
2 under this subchapter.

3 § 2967. AID PROJECTION; STATE SHARE

4 (a) On or before December 15, the Secretary shall publish an estimate, by
5 ~~town school district, city school district, union school district, unified union~~
6 ~~school district, incorporated school district, and the member school districts of~~
7 ~~an interstate school district supervisory union,~~ of the amount of State
8 assistance necessary to fully fund sections 2961 through 2963 of this title in the
9 ensuing school year. The provisions of 2 V.S.A. § 20(d) (expiration of
10 required reports) shall not apply to the report to be made under this subsection.

11 * * *

12 § 2968. REPORTS

13 (a) On or before November 15, March 15, and August 1 of each school
14 year, each supervisory union ~~and school district~~ shall file a financial report
15 with the Secretary in a form prescribed by the Secretary. The report shall
16 describe total expenditures for special education actually incurred during the
17 preceding period, and shall describe revenues derived from different funding
18 sources, including federal assistance, State assistance under this ~~section~~
19 chapter, and local effort.

20 (b) If a supervisory union ~~or school district~~ fails to file a complete report by
21 August 1, until the properly completed August 1 report is filed and accepted by

1 ~~the Secretary, the Secretary may withhold any funds due the supervisory union~~
2 ~~or school district~~ under this title and shall subtract \$100.00 per business day
3 from funds due to the supervisory union ~~or school district~~ under this title for
4 that fiscal year. The Secretary may waive the \$100.00 penalty required under
5 this subsection upon appeal by the supervisory union ~~or school district~~. The
6 Secretary shall establish procedures for administration of this subsection.

7 (c) The Secretary shall review and monitor the reports received pursuant to
8 subsection (a) of this section as well as the service plans received pursuant to
9 section 2964 of this title, and shall assist supervisory unions ~~and school~~
10 ~~districts~~ to complete and submit these documents in a timely and accurate
11 fashion.

12 (d) Special education receipts and expenditures shall be included within the
13 audits required of supervisory unions ~~and school districts~~ pursuant to sections
14 ~~section 323 and 563(17)~~ of this title.

15 § 2969. PAYMENTS

16 (a) On or before August 15, December 15, and April 15 of each school
17 year, the State Treasurer shall withdraw from the Education Fund, based on
18 warrant of the Commissioner of Finance and Management, and shall forward
19 to each ~~school district~~ supervisory union, the amount of State assistance
20 estimated in accordance with State Board rules to be necessary to fund sections
21 2961 through 2963a of this title in the current fiscal period. The State Board

1 ~~shall by rule ensure that the amount of such assistance shall be adjusted to~~
2 compensate for any overpayments or underpayments determined, after review
3 and acceptance of the reports submitted under section 2968 of this title, to have
4 been made in previous periods. Notwithstanding this subsection, failure to
5 submit the reports within the timelines established by subsection 2968(a) of
6 this title shall result in the withholding of any payments until the report is filed.

7 (b) ~~{Deleted.}~~ [Repealed.]

8 (c) For the purpose of meeting the needs of students with emotional
9 behavioral problems, each fiscal year the Secretary shall use for training,
10 program development, and building school and regional capacity, up to one
11 percent of the State funds appropriated under this subchapter.

12 (d) For the training of teachers, administrators, and other personnel in the
13 identification and evaluation of, and provision of education services to children
14 who require educational supports, each fiscal year the Secretary shall use up to
15 0.75 percent of the State funds appropriated under this subchapter. In order to
16 set priorities for the use of these funds, the Secretary shall identify effective
17 practices and areas of critical need. The Secretary may expend up to five
18 percent of these funds for statewide training and shall distribute the remaining
19 funds to ~~school districts or~~ supervisory unions.

20 (e) ~~School districts and supervisory~~ Supervisory unions that apply for funds
21 under this section must submit a plan for training that will result in lasting

1 ~~changes in their school systems and give assurances that at least 50 percent of~~
2 the costs of training, including in-kind costs, will be assumed by the applicant.
3 The Secretary shall establish written procedures and criteria for the award of
4 such funds. In addition, the Secretary may identify schools most in need of
5 training assistance and may pay for 100 percent of the assistance ~~provided to~~
6 the supervisory union for these schools to fund the provision of training
7 assistance for these schools.

8 §§ 2970, 2971. [RESERVED FOR FUTURE USE.].

9 * * *

10 § 2974. SPECIAL EDUCATION PROGRAM; FISCAL REVIEW

11 (a) Annually, the Secretary shall report to the State Board regarding:

12 (1) special education expenditures by ~~school districts~~ supervisory
13 unions;

14 (2) the rate of growth or decrease in special education costs, including
15 the identity of ~~high high- and low-spending districts~~ low-spending supervisory
16 unions;

17 (3) results for special education students;

18 (4) the availability of special education staff;

19 (5) the consistency of special education program implementation
20 statewide;

1 ~~(6) the status of the education support systems in school districts~~

2 supervisory unions; and

3 (7) a statewide summary of the special education student count,
4 including:

5 (A) the percentage of the total average daily membership represented
6 by special education students statewide and by ~~school district~~ supervisory
7 union;

8 (B) the percentage of special education students by disability
9 category; and

10 (C) the percentage of special education students ~~by in-district~~
11 placement, served by public schools within the supervisory union, by day
12 placement, and by residential placement.

13 (b) The Secretary's report shall include the following data for both ~~high~~
14 high- and low-spending districts low-spending supervisory unions:

15 (1) each ~~district's~~ supervisory union's special education staff-to-child
16 count ratios as compared to the State average, including a breakdown of ratios
17 by staffing categories;

18 (2) each ~~district's~~ supervisory union's percentage of students in day
19 programs and residential placements as compared to the State average of
20 students in those placements and information about the categories of
21 disabilities for the students in such placements;

1 ~~(3) whether the district supervisory union was in compliance with~~
2 section 2901 of this title;

3 (4) any unusual community characteristics in each ~~district~~ supervisory
4 union relevant to special education placements;

5 (5) a review of ~~high high-~~ and ~~low-spending districts'~~ low-spending
6 supervisory unions' special education student count patterns over time;

7 (6) a review of the ~~district's~~ supervisory union's compliance with
8 federal and State requirements to provide a free, appropriate public education
9 to eligible students; and

10 (7) any other factors affecting its spending.

11 (c) The Secretary shall review ~~low-spending districts~~ low-spending
12 supervisory unions to determine the reasons for their spending patterns and
13 whether those ~~districts~~ supervisory unions used cost-effective strategies
14 appropriate to replicate in other ~~districts~~ supervisory unions.

15 (d) For the purposes of this section, a "~~high-spending district~~ high-spending
16 supervisory union" is a ~~school district~~ supervisory union that, in the previous
17 school year, spent at least 20 percent more than the statewide average of
18 special education eligible costs per average daily membership. Also for the
19 purposes of this section, a "~~low-spending district~~ low-spending supervisory
20 union" is a ~~school district~~ supervisory union that, in the previous school year,

1 ~~spent no more than 80 percent of the statewide average of special education~~
2 eligible costs per average daily membership.

3 (e) The Secretary and Agency staff shall assist the ~~high spending districts~~
4 high-spending supervisory unions, that have been identified in subsection (a)
5 of this section and have not presented an explanation for their spending that is
6 satisfactory to the Secretary, to identify reasonable alternatives and to develop
7 a remediation plan. Development of the remediation plan shall include an
8 on-site review. The ~~district~~ supervisory union shall have two years to make
9 progress on the remediation plan. At the conclusion of the two years or earlier,
10 the ~~district~~ supervisory union shall report its progress on the remediation plan.

11 (f) Within 30 days of receipt of the ~~district's~~ supervisory union's report of
12 progress, the Secretary shall notify the ~~district~~ supervisory union that its
13 progress is either satisfactory or not satisfactory.

14 (1) If the ~~district~~ supervisory union fails to make satisfactory progress,
15 the Secretary shall notify the ~~district~~ supervisory union that, in the ensuing
16 school year, the Secretary shall withhold 10 percent of the ~~district's~~
17 supervisory union's special education expenditures reimbursement pending
18 satisfactory compliance with the plan.

19 (2) If the district fails to make satisfactory progress after the first year of
20 withholding, 10 percent shall be withheld in each subsequent year pending
21 satisfactory compliance with the plan; provided, however, before funds are

1 ~~withheld in any year under this subdivision (f)(2), the district supervisory~~
2 ~~union shall explain to the State Board either the reasons the district supervisory~~
3 ~~union believes it made satisfactory progress on the remediation plan or the~~
4 ~~reasons it failed to do so. The State Board's decision whether to withhold~~
5 ~~funds under this subdivision shall be final.~~

6 (3) If the ~~district~~ supervisory union makes satisfactory progress under
7 any subdivision of this subsection, the Secretary shall release to the ~~district~~
8 supervisory union any special education expenditures reimbursement withheld
9 for the prior fiscal year only.

10 (g) Within 10 days after receiving the Secretary's notice under subdivision
11 (f)(1) of this section, the ~~district~~ supervisory union may challenge the
12 Secretary's decision by filing a written objection to the State Board outlining
13 the reasons the ~~district~~ supervisory union believes it made satisfactory progress
14 on the remediation plan. The Secretary may file a written response within 10
15 days after the ~~district's~~ supervisory union's objection is filed. The State Board
16 may give the ~~district~~ supervisory union and the Secretary an opportunity to be
17 heard. The State Board's decision shall be final. The State shall withhold no
18 portion of the ~~district's~~ supervisory union's reimbursement before the State
19 Board issues its decision under this subsection.

1 ~~(b) Nothing in this section shall prevent a school district supervisory union~~
2 from seeking and receiving the technical assistance of Agency staff to reduce
3 its special education spending.

4 § 2975. UNUSUAL SPECIAL EDUCATION COSTS; FINANCIAL
5 ASSISTANCE

6 The Secretary may use up to two percent of the funds appropriated for
7 special education expenditures, as that term is defined in subsection 2967(b) of
8 this title, to directly assist ~~school districts~~ supervisory unions with special
9 education expenditures of an unusual or unexpected nature. These funds shall
10 not be used for exceptional circumstances that are funded under section 2963a
11 of this title. The Secretary's decision regarding a ~~district's~~ supervisory union's
12 eligibility for and amount of assistance shall be final.

13 * * * Study of Funding for Special Education * * *

14 ~~Sec. 2. STUDY OF FUNDING FOR SPECIAL EDUCATION~~

15 ~~(a) Study. The Agency of Education shall contract with the University of~~
16 ~~Vermont for a study of special education funding and practice. The University~~
17 ~~shall evaluate the feasibility of implementing the census block model of~~
18 ~~funding, or a variation of this model as it deems appropriate, for special~~
19 ~~education in Vermont, including the advantages, disadvantages, and policy~~
20 ~~considerations. The University shall develop a special education funding~~
21 ~~model recommendation for Vermont, which shall be designed to provide~~

1 ~~incentives for desirable practices and stimulate innovation in the delivery of~~
2 ~~services and shall take into account any factors the University determines~~
3 ~~relevant. The University shall conduct its evaluation and develop its~~
4 ~~recommendation in collaboration with the Agency of Education and interested~~
5 ~~superintendents, special educators, school business and administrative staff,~~
6 ~~and special education staff from the Vermont State Colleges and other~~
7 ~~stakeholders. The University shall present its findings and recommendation to~~
8 ~~the General Assembly and the Agency of Education by December 15, 2017.~~

9 ~~(b) Funding. The Agency of Education shall allocate out of its fiscal year~~
10 ~~2017 budget a sum of \$40,000.00 to provide funding to the University of~~
11 ~~Vermont for the purposes set forth in this section. Any application of funds by~~
12 ~~the University for the purpose of administrative overhead shall be capped at~~
13 ~~five percent of the total sum allocated pursuant to this section.~~

Sec. 2. STUDY OF FUNDING FOR SPECIAL EDUCATION

~~(a) Study. The Agency of Education shall contract for a study of special~~
~~education funding and practice. The study shall evaluate the feasibility of~~
~~implementing the census block model of funding, or a variation of this model~~
~~as the contractor deems appropriate, for special education in Vermont,~~
~~including the advantages, disadvantages, and policy considerations. The study~~
~~shall develop a special education funding model recommendation for Vermont,~~
~~which shall be designed to provide incentives for desirable practices and~~

~~stimulate innovation in the delivery of services and shall take into account any factors the contractor determines relevant. The contractor shall conduct its evaluation and develop its recommendation in collaboration with the Agency of Education and interested superintendents, special educators, school business and administrative staff, and special education staff from the Vermont State Colleges and other stakeholders. The contractor shall present its findings and recommendations to the General Assembly and the Agency of Education by December 15, 2017.~~

~~(b) Funding. The Agency of Education shall allocate out of its fiscal year 2017 budget a sum of \$40,000.00 to provide for the purposes set forth in this section. Any application of funds for the purpose of administrative overhead shall be capped at five percent of the total sum allocated pursuant to this section.~~

1 * * * Appropriation for the District Management Council * * *

2 Sec. 3. APPROPRIATION FOR THE DISTRICT MANAGEMENT

3 COUNCIL TO PROVIDE CONSULTING SERVICES ON THE

4 DELIVERY OF SPECIAL EDUCATION SERVICES

5 (a) Consulting Services. The Agency of Education shall contract with the

6 District Management Council for the provision by the Council of special

7 education consulting services to up to 10 supervisory unions, supervisory

8 districts, or unified union school districts. The Agency, in consultation with

1 ~~the Council and interested districts and supervisory unions, shall select, as~~
2 member districts and supervisory unions for the study, at least three existing
3 supervisory unions or supervisory districts with an average daily membership
4 of 1,500 students or more and at least three unified union school districts
5 formed pursuant to 2015 Acts and Resolves No. 46. In no event shall the
6 Agency include a district or supervisory union that does not provide an
7 equivalent match equal to 50 percent of the value of the Council's services to
8 the district or supervisory union; the other 50 percent being funded by the
9 appropriation provided in this section. This financial contribution by districts
10 or supervisory unions may be in the form of transition grants or other
11 appropriate grant funding and may, at the discretion of the district's or
12 supervisory union's board of directors, be allocated across the district's or
13 supervisory union's 2017 and 2018 fiscal years. The Council shall present a
14 final report with recommendations on the delivery of special education
15 services to the General Assembly and the Agency of Education on or before
16 October 1, 2017. The Council shall provide any and all research and data
17 compiled during the course of its work pursuant to this section to the Agency
18 of Education.

19 (b) Appropriation. Notwithstanding any provision to the contrary in
20 16 V.S.A. § 4025, the sum of \$250,000.00 is appropriated from the Education
21 Fund for fiscal year 2017 to the Agency of Education. The Agency shall

1 ~~administer the funds in accordance with this section and any unused funds~~
2 ~~shall revert to the Education Fund.~~

** * * Appropriation for Consulting Services on the Delivery of Special
Education Services * * **

*Sec. 3. APPROPRIATION FOR CONSULTING SERVICES ON THE
DELIVERY OF SPECIAL EDUCATION SERVICES*

(a) Consulting services. The Agency of Education shall contract with a consulting firm meeting the criteria set forth in subsection (b) of this section for the provision of special education consulting services to up to 10 supervisory unions, supervisory districts, or unified union school districts. The Agency, in consultation with the consulting firm and interested districts and supervisory unions, shall select, as member districts and supervisory unions for the study, at least three existing supervisory unions or supervisory districts with an average daily membership of 1,500 students or more and at least three unified union school districts formed pursuant to 2015 Acts and Resolves No. 46. In no event shall the Agency include a district or supervisory union that does not provide an equivalent match equal to 50 percent of the value of the consulting firm's services to the district or supervisory union; the other 50 percent being funded by the appropriation provided in this section. This financial contribution by districts or supervisory unions may be in the form of transition grants or other appropriate grant funding and may, at the

~~discretion of the district's or supervisory union's board of directors, be allocated across the district's or supervisory union's 2017 and 2018 fiscal years. The consulting firm shall present a final report with recommendations on the delivery of special education services to the General Assembly and the Agency of Education on or before October 1, 2017. The consulting firm shall provide to the Agency of Education any and all research and data compiled during the course of its work pursuant to this section.~~

~~(b) Selection of consulting firm. The Agency of Education shall contract with a consulting firm which:~~

~~(1) has experience working directly with Vermont school districts and with school districts across the country to raise achievement and manage cost in special education;~~

~~(2) uses national special education staffing benchmarking from at least 1,000 school districts covering at least 10 million students, and web-based schedule sharing technology that captures how individual staff members use their time, including duration, location, and group size;~~

~~(3) has conducted and published primary research on cost-effective strategies for raising achievement of struggling students, both with and without special needs; and~~

~~(4) is recognized as a national expert and published author on raising special education achievement in a cost-effective manner.~~

~~(c) Appropriation. Notwithstanding any provision to the contrary in 16 V.S.A. § 4025, the sum of \$200,000.00 is appropriated from the Education Fund for fiscal year 2017 to the Agency of Education. The Agency shall administer the funds in accordance with this section and any unused funds shall revert to the Education Fund.~~

~~*** Agency of Education Special Education Staff ***~~

~~Sec. 4. CREATION OF AGENCY OF EDUCATION STAFF POSITION~~

~~To the extent funding is made available in the Agency of Education's budget, one position shall be transferred and converted from the State's employee position pool to the Agency of Education for the purpose of administering Secs. 2 and 3 of this act as well as assisting with the administration of the flexible pathways programs in 16 V.S.A. chapter 23, subchapter 2.~~

~~*** Effective Dates ***~~

~~Sec. ~~5~~4 . EFFECTIVE DATES~~

~~Secs. 2, 3, ~~4~~, and this section shall take effect on July 1, 2016. Sec. 1 shall take effect on July 1, 2017.~~

~~*** Payment of Special Education Funding to Supervisory Unions ***~~

~~Sec. 1. 16 V.S.A. chapter 101 is amended to read:~~

~~CHAPTER 101. SPECIAL EDUCATION~~

~~Subchapter 1. General Provisions~~

~~***~~

§ 2948. STATE AID

(a) *For the payment of general State aid, children with disabilities shall be counted in the same manner as children who do not have disabilities.*

(b) *[Repealed.]*

(c) *Each ~~school-district~~ supervisory union shall receive an essential early education grant each school year. Grants shall be distributed according to the estimated number of children from three through five years of age. The State Board by rule shall encourage coordination of services and may set other terms of the grant. Each ~~district~~ supervisory union shall be responsible for the remainder of the costs of providing necessary services under section 2956 of this title. Annually, for each following fiscal year, the essential early education grant shall be increased by the most recent cumulative price index, as of November 15, for State and local government purchases of goods and services from fiscal year 2002 through that following fiscal year, as provided through the State's participation in the New England Economic Project.*

(d), (e) *[Repealed.]*

(f) *If a student is being provided education or special education or both in a school operated by the Department of Corrections, the Department of Corrections shall serve the student as if the Department were the school district of residence of the student.*

(g) Notwithstanding any law to the contrary, a child with a disability who is residing in a State school, hospital, or community residential facility or in a State-approved private residential facility shall be provided special education in accordance with this chapter by the ~~school district~~ supervisory union in which the facility is located; provided, however, that this special education may be directly provided by the facility in which the child resides when the child's individualized education program and treatment plans indicate that the facility is the most appropriate educational placement for the child. Programs of special education provided by a facility described in this subsection shall be subject to the approval of the Secretary.

(h)-(j) [Repealed.]

(k) For the costs of students in the custody of the Department of Corrections, the Secretary of Education shall pay for the costs of special education in accordance with the provisions of 28 V.S.A. § 120.

(l) [Repealed.]

(m) All other State aid to ~~school districts~~ and supervisory unions shall be set forth in subchapter 2 of this chapter.

(n) If a student is being provided education or special education, or both in a school operated by the Department for Children and Families, the funding and provision of services shall be the responsibility of the Department for Children and Families and special education procedural responsibility shall

be the responsibility of the supervisory union for the school district of residence of the student's parent, parents, or guardian.

* * *

§ 2950. STATE-PLACED STUDENTS

(a) ~~School-district~~ Supervisory union reimbursement. The supervisory union in which there is a school district responsible for educating a State-placed student under section 1075 of this title may claim and the Secretary shall reimburse 100 percent of all special education costs for the student, including costs for mainstream services. As a condition of receiving this reimbursement, the ~~district~~ supervisory union shall provide documentation in support of its claim, sufficient to enable the Secretary to determine whether to recommend appropriate cost-saving alternatives. The Secretary may approve any costs incurred in educating a State-placed student who is not eligible for special education that are incurred due to the special needs of the student, and, if approved, the Secretary shall pay those costs. When a State agency places and registers a student in a new district, the district and the supervisory union of which it is a member may request and the Agency of Education, or the agency that placed the student, or both, shall provide prompt consultative and technical assistance to the receiving district and the supervisory union.

* * *

§ 2957. SPECIAL EDUCATION ADMINISTRATIVE AND JUDICIAL
APPEALS; LIMITATIONS

* * *

(e) *Except as provided in 20 U.S.C. § 1412(a)(10)(C) or unless a court or hearing officer determines otherwise, where a unilateral placement has been made without offering the supervisory union for the school district of residence ~~being offered~~ a reasonable opportunity to evaluate the child and to develop an individualized education program, reimbursement may not be sought for any costs incurred before the ~~school district~~ supervisory union is offered such an opportunity.*

§ 2958. RESIDENTIAL PLACEMENT REVIEW TEAM; RESIDENTIAL
PLACEMENTS

(a) *A school district shall notify the parents and the Secretary when it believes residential placement is a possible option for inclusion in a child's individualized education program.*

(b) *The Secretary may establish from within the Agency a Residential Placement Review Team. At the discretion of the Secretary, other persons not employed by the Agency may be appointed to serve on the Team. The Team shall make every effort to assist ~~school districts~~ supervisory unions and parents in understanding the range of educational options available as early as possible in the planning process for the child. The Team shall:*

(1) *advise ~~school districts~~ supervisory unions on alternatives to residential placement;*

(2) *review each individualized education program calling for residential placement of a student to consider whether the student can be educated in a less restrictive environment;*

(3) *assist ~~school districts~~ supervisory unions in locating cost-effective and appropriate residential facilities where necessary;*

(4) *request a new individualized education program where it believes that appropriate alternatives to residential placement are available; and*

(5) *offer mediation as a means of resolving disputes relating to the need for residential placement or the particular residential facility recommended for a child with a disability.*

(c) *The State Board shall by rule establish policies and procedures for the operations of the Residential Placement Review Team. The rules shall be consistent with federal law and, at minimum, shall include the following:*

(1) *provision for the Secretary to initiate a due process proceeding to challenge the need for residential placement where the team believes that a less restrictive educational placement is both available and appropriate for the child with a disability, and to reimburse the ~~school district~~ supervisory union and the parents or guardian of the child for reasonable costs and attorney's fees in the event the Secretary does not prevail;*

(2) *provision for technical assistance, a plan for correction, or withholding of funds under this section where a ~~school district~~ supervisory union places a child in a residential facility more expensive than an available and appropriate alternative residential facility; however, such withholding of funds shall not exceed the difference between the cost of the two facilities and the rule shall provide an opportunity for appeal of the withholding; and*

(3) *procedures and timelines to ensure that residential placement of a child with disabilities is not delayed or disrupted so as to adversely affect the child.*

(d) *Whenever a residential placement is determined to be necessary and appropriate for a child with a disability, the Residential Placement Review Team shall include in the child's individualized education program goals and objectives designed to reintegrate the child into a local school district.*

(e) *Costs for residential placement shall be reimbursed under subchapter 2 of this chapter only if the residential facility is approved by the State Board for the purposes of providing special education and related services to children with disabilities.*

§ 2959. RULEMAKING; MEDIATION

(a) *The State Board shall adopt rules governing the determination of a child's eligibility for special education, accounting and financial reporting standards, program requirements, procedural requirements, and the*

identification of the ~~district~~ supervisory union or agency responsible for each child with a disability.

(b) Subject to rules established by the State Board, the Secretary shall offer mediation to parents, children with disabilities, and districts, supervisory unions, and agencies involved in special education disputes.

§ 2959a. EDUCATION MEDICAID RECEIPTS

(a) It is the intent of the General Assembly that the State of Vermont shall maximize its receipt of federal Medicaid dollars available for reimbursement of medically related services provided to students who are Medicaid eligible.

It is further the intent that:

(1) each supervisory union identify special education and other students eligible for Medicaid reimbursement and, to the extent possible, submit Medicaid bills for services reimbursement;

(2) the Agencies of Education and of Human Services work with local school districts to maximize reimbursements, including services to non-IEP students.

(b) A Medicaid Reimbursement Special Fund is established within the Agency of Education. Funds received by the State under this section shall be transferred to the Medicaid Reimbursement Special Fund. The Fund receipts shall be allocated in accordance with this section.

(c) At least annually, the Secretary of Education shall pay to each supervisory union submitting Medicaid bills under this section, 50 percent of the reimbursed funds generated by the supervisory union's bill, excluding claims generated by State-placed students. Unless the supervisory union has agreed to use the funds to operate a supervisory unionwide program or to distribute the funds in a different manner, upon receipt, the supervisory union shall distribute the funds to its member school districts based on how the funds were generated. The Secretary may withhold payment due a ~~school-district~~ supervisory union pursuant to section 2950 of this title for a Medicaid-eligible State-placed student if the ~~school-district~~ supervisory union has not submitted a Medicaid claim for reimbursable services for that student.

(d) If the amount of Medicaid reimbursement funds received for services provided in the prior State fiscal year exceeds \$25,000,000.00, in addition to the 50 percent of the funds paid to supervisory unions submitting Medicaid bills, 25 percent of the amounts in excess of the \$25,000,000.00 shall be paid into an incentive fund created in the Agency of Education. These funds shall be used for an incentive payment to supervisory unions with student participation rates of over 80 percent in accordance with a formula to be developed by the Agency, in consultation with the Vermont Superintendents Association. For any incentive payments made subsequent to fiscal year 2007, the \$25,000,000.00 threshold of this subsection shall be increased by the

percentage increase of the most recent New England Economic Project Cumulative Price Index, as of November 15, for state and local government purchases of goods and services from fiscal year 2005 through the fiscal year for which the payment is being determined, plus an additional one-tenth of one percent.

(e) ~~School districts~~ Supervisory unions shall use funds received under this section to pay for reasonable costs of administering the Medicaid claims process, and school districts or supervisory unions shall use funds received under this section for prevention and intervention programs in prekindergarten through grade 12. The programs shall be designed to facilitate early identification of and intervention with children with disabilities and to ensure all students achieve rigorous and challenging standards approved and adopted by the State Board or locally adopted standards. A ~~school district~~ supervisory union shall provide annual written justification to the Secretary of Education ~~of the use of~~ how it or its member districts used the funds. Such annual submission shall show how the funds' use is expressly linked to those provisions of the ~~school district's~~ supervisory union's action plan that directly relate to improving student performance. A ~~school district~~ supervisory union shall include in its annual report the amount of the prior year's Medicaid reimbursement revenues and the use of Medicaid funds consistent with the purposes set forth in this subsection.

(f) Up to 30 percent of Medicaid reimbursements received under this section shall be available for administrative costs of the Agencies of Education and of Human Services related to the collection, processing, and reporting of education Medicaid reimbursements and statewide programs. The Secretaries of Education and of Human Services shall expend monies from the Fund only as appropriated by the General Assembly.

(g) Remaining reimbursed funds shall be deposited into the Education Fund.

* * *

Subchapter 2. Aid for Special Education and Support Services

§ 2961. STANDARD MAINSTREAM BLOCK GRANTS

(a) Each ~~town school district, city school district, union school district, unified union school district, incorporated school district, and the member school districts of an interstate school district~~ supervisory union shall be eligible to receive a standard mainstream block grant each school year. The mainstream block grant shall be equal to the supervisory union's mainstream salary standard multiplied by 60 percent.

(b) The ~~district,~~ supervisory union shall expend all such assistance for special education services or for remedial or compensatory services in accordance with its service plan as required under section 2964 of this title. It

shall likewise expend, from local funds, an amount not less than 40 percent of its mainstream salary standard for special education.

(c) As used in this section:

(1) "Mainstream salary standard" means:

(A) the ~~district's~~ supervisory union's full-time equivalent staffing for special education for the preceding year multiplied by the average special education teacher salary in the State for the preceding year; plus

(B) ~~its share, prorated according to average daily membership among the member districts of the supervisory union, of an amount equal to the average special education administrator salary in the State for the preceding year, plus, for any supervisory union or supervisory district with member districts which have in the aggregate more than 1,500 average daily membership, the school district's prorated share of a fraction of an additional full-time equivalent salary for a special education administrator, the numerator of which is the aggregate average daily membership ~~in~~ of the supervisory ~~union or supervisory district~~ union's member districts minus 1,500, and the denominator of which is the aggregate average daily membership of member districts in the largest supervisory union ~~or supervisory district~~ in the State minus 1,500.~~

(2) "Full-time equivalent staffing" means 9.75 special education teaching positions per 1,000 average daily membership.

(d) If in any fiscal year, a ~~district that maintains a school~~ supervisory union in which a school is maintained does not expend an amount equal to its mainstream salary standard on special education expenditures, the ~~district~~ supervisory union may expend the balance, including the matching funds, to provide support and remedial services pursuant to section 2902 or 2903 of this title. A ~~district~~ supervisory union choosing to expend funds in this way shall submit a report describing the services provided and their costs with the final financial report submitted under section 2968 of this title.

§ 2962. EXTRAORDINARY SERVICES REIMBURSEMENT

(a) Except as otherwise provided in this subchapter, extraordinary services reimbursement shall be payable, based on where the related cost is incurred, to ~~each~~ a town school district, city school district, union school district, unified union school district, incorporated school district, the member school districts of an interstate school district, and unorganized town or gore or to a supervisory union.

(b) The amount of extraordinary services reimbursement provided to each district or supervisory union shall be equal to 90 percent of its extraordinary special education expenditures.

(c) As used in this subchapter, “extraordinary special education expenditures” means a school district’s or supervisory union’s allowable expenditures that for any one child exceed \$50,000.00 for a fiscal year. In this

subsection, child means a student with disabilities who is three years of age or older in the current school year. The State Board shall define allowable expenditures that shall include any expenditures required under federal law, and any costs of mediation conducted by a mediator who is approved by the Secretary.

(d) [Repealed.]

§ 2963. SPECIAL EDUCATION EXPENDITURES REIMBURSEMENT

(a) ~~Each~~ Based on where the related cost is incurred, each town school district, city school district, union school district, unified union school district, incorporated school district, the member school districts of an interstate school district, and unorganized town or gore or supervisory union shall receive a special education expenditures reimbursement grant each school year.

(b) The amount of a school district's or supervisory union's special education expenditures reimbursement shall be equal to the total of its special education expenditures multiplied by the reimbursement rate for that year.

** * **

§ 2963a. EXCEPTIONAL CIRCUMSTANCES

(a) In lieu of reimbursement under section 2963 of this title, the Secretary shall reimburse a school district or supervisory union for 80 percent of the ~~following expenditures~~

~~:(1)—Costs costs not eligible for reimbursement under section 2962 of this title for each student causing the school district or supervisory union to be eligible for extraordinary services reimbursement pursuant to that section. However, in order for a school district or supervisory union to be eligible for reimbursement under this section, the total costs of the school district or supervisory union eligible for extraordinary services reimbursement must equal or exceed 15 percent of the total costs eligible for ~~state~~ State assistance under sections 2961, 2962, and 2963 of this title.~~

~~(2)—The costs incurred by the school district in placing and maintaining a student in a program operated by the Vermont Center for the Deaf and Hard of Hearing.~~

~~(b) An eligible school district or supervisory union may apply to the Secretary to receive reimbursement under this section. The Secretary shall award reimbursement to a school district or supervisory union under this section if the Secretary makes a determination that school district or supervisory union considered all the cost-effective and appropriate available alternatives for placement and programs for students before incurring these costs. A decision of the Secretary shall be final.~~

§ 2964. SERVICE PLAN

~~(a) As a condition of receiving assistance under this subchapter, a supervisory union shall file a service plan with the Secretary annually on or~~

before October 15. The service plan shall contain the anticipated special education expenditures for the following school year for the supervisory union and its member districts. The plan shall be in a form prescribed by the Secretary and shall include information on services planned and anticipated expenditures.

(b) If a supervisory union fails to file a service plan by October 15, the Secretary may withhold any funds due the supervisory ~~district or school districts~~ union and its member districts under this title until a service plan is filed and accepted by the Secretary as properly completed.

§ 2965. WITHHOLDING OF AID

If a ~~district~~ supervisory union, school district, or agency fails to meet its legally established obligations toward a child with a disability or the child's parent, and as a result the Agency of Education incurs costs to meet these obligations beyond those otherwise incurred under this chapter, the Secretary shall withhold the amount of funds incurred from any grants due the ~~district~~ supervisory union, school district, or agency under this subchapter.

§ 2967. AID PROJECTION; STATE SHARE

(a) On or before December 15, the Secretary shall publish an estimate, by ~~town school district, city school district, union school district, unified union school district, incorporated school district, and the member school districts of an interstate school district~~ supervisory union and its member districts to the

extent they anticipate reimbursable expenditures under this chapter, of the amount of State assistance necessary to fully fund sections 2961 through 2963 of this title in the ensuing school year. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

* * *

§ 2968. *REPORTS*

(a) On or before November 15, March 15, and August 1 of each school year, each supervisory union ~~and school district~~ and its member districts to the extent they incur reimbursable expenditures under this chapter shall file a financial report with the Secretary in a form prescribed by the Secretary. The report shall describe total expenditures for special education actually incurred during the preceding period, and shall describe revenues derived from different funding sources, including federal assistance, State assistance under ~~this section~~ chapter, and local effort.

(b) If a supervisory union ~~or school district fails~~ or its member districts that have incurred reimbursable expenditures under this chapter fail to file a complete report by August 1, until the properly completed August 1 report is filed and accepted by the Secretary, the Secretary may withhold any funds due the supervisory union or school district under this title and shall subtract \$100.00 per business day from funds due to the supervisory union or school

district under this title for that fiscal year. The Secretary may waive the \$100.00 penalty required under this subsection upon appeal by the supervisory union or school district. The Secretary shall establish procedures for administration of this subsection.

(c) The Secretary shall review and monitor the reports received pursuant to subsection (a) of this section as well as the service plans received pursuant to section 2964 of this title, and shall assist supervisory unions and school districts to complete and submit these documents in a timely and accurate fashion.

(d) Special education receipts and expenditures shall be included within the audits required of ~~supervisory unions and school districts~~ a supervisory union and its member districts that have incurred reimbursable expenditures under this chapter pursuant to sections section 323 and 563(17) of this title.

§ 2969. PAYMENTS

(a) On or before August 15, December 15, and April 15 of each school year, the State Treasurer shall withdraw from the Education Fund, based on warrant of the Commissioner of Finance and Management, and shall forward to each ~~school district~~ supervisory union and its member districts to the extent they anticipate reimbursable expenditures under this chapter, the amount of State assistance estimated in accordance with State Board rules to be necessary to fund sections 2961 through 2963a of this title in the current fiscal

period. The State Board shall by rule ensure that the amount of such assistance shall be adjusted to compensate for any overpayments or underpayments determined, after review and acceptance of the reports submitted under section 2968 of this title, to have been made in previous periods. Notwithstanding this subsection, failure to submit the reports within the timelines established by subsection 2968(a) of this title shall result in the withholding of any payments until the report is filed.

(b) ~~[Deleted.]~~ [Repealed.]

(c) For the purpose of meeting the needs of students with emotional behavioral problems, each fiscal year the Secretary shall use for training, program development, and building school and regional capacity, up to one percent of the State funds appropriated under this subchapter.

(d) For the training of teachers, administrators, and other personnel in the identification and evaluation of, and provision of education services to children who require educational supports, each fiscal year the Secretary shall use up to 0.75 percent of the State funds appropriated under this subchapter. In order to set priorities for the use of these funds, the Secretary shall identify effective practices and areas of critical need. The Secretary may expend up to five percent of these funds for statewide training and shall distribute the remaining funds to school districts or supervisory unions.

(e) School districts and supervisory unions that apply for funds under this section must submit a plan for training that will result in lasting changes in their school systems and give assurances that at least 50 percent of the costs of training, including in-kind costs, will be assumed by the applicant. The Secretary shall establish written procedures and criteria for the award of such funds. In addition, the Secretary may identify schools most in need of training assistance and may pay for 100 percent of the assistance ~~provided to the~~ supervisory union or school district for these schools to fund the provision of training assistance for these schools.

* * *

§ 2974. SPECIAL EDUCATION PROGRAM; FISCAL REVIEW

(a) Annually, the Secretary shall report to the State Board regarding:

(1) special education expenditures by ~~school districts~~ supervisory unions;

(2) the rate of growth or decrease in special education costs, including the identity of ~~high high- and low spending districts~~ low-spending supervisory unions;

(3) results for special education students;

(4) the availability of special education staff;

(5) the consistency of special education program implementation statewide;

(6) *the status of the education support systems in ~~school-districts~~ supervisory unions; and*

(7) *a statewide summary of the special education student count, including:*

(A) *the percentage of the total average daily membership represented by special education students statewide and by ~~school-district~~ supervisory union;*

(B) *the percentage of special education students by disability category; and*

(C) *the percentage of special education students ~~by in-district placement~~, served by public schools within the supervisory union, by day placement, and by residential placement.*

(b) *The Secretary's report shall include the following data for both ~~high- and low-spending districts~~ low-spending supervisory unions:*

(1) *each ~~district's~~ supervisory union's special education staff-to-child count ratios as compared to the State average, including a breakdown of ratios by staffing categories;*

(2) *each ~~district's~~ supervisory union's percentage of students in day programs and residential placements as compared to the State average of students in those placements and information about the categories of disabilities for the students in such placements;*

(3) *whether the ~~district~~ supervisory union was in compliance with section 2901 of this title;*

(4) *any unusual community characteristics in each ~~district~~ supervisory union relevant to special education placements;*

(5) *a review of ~~high~~ high- and low-spending districts' low-spending supervisory unions' special education student count patterns over time;*

(6) *a review of the ~~district's~~ supervisory union's compliance with federal and State requirements to provide a free, appropriate public education to eligible students; and*

(7) *any other factors affecting its spending.*

(c) *The Secretary shall review ~~low-spending districts~~ low-spending supervisory unions to determine the reasons for their spending patterns and whether those ~~districts~~ supervisory unions used cost-effective strategies appropriate to replicate in other ~~districts~~ supervisory unions.*

(d) *For the purposes of this section, a “~~high-spending district~~ high-spending supervisory union” is a ~~school-district~~ supervisory union that, in the previous school year, spent at least 20 percent more than the statewide average of special education eligible costs per average daily membership. Also for the purposes of this section, a “~~low-spending district~~ low-spending supervisory union” is a ~~school-district~~ supervisory union that, in the previous*

school year, spent no more than 80 percent of the statewide average of special education eligible costs per average daily membership.

(e) The Secretary and Agency staff shall assist the ~~high-spending districts~~ high-spending supervisory unions, that have been identified in subsection (a) of this section and have not presented an explanation for their spending that is satisfactory to the Secretary, to identify reasonable alternatives and to develop a remediation plan. Development of the remediation plan shall include an on-site review. The ~~district~~ supervisory union shall have two years to make progress on the remediation plan. At the conclusion of the two years or earlier, the ~~district~~ supervisory union shall report its progress on the remediation plan.

(f) Within 30 days of receipt of the ~~district's~~ supervisory union's report of progress, the Secretary shall notify the ~~district~~ supervisory union that its progress is either satisfactory or not satisfactory.

(1) If the ~~district~~ supervisory union fails to make satisfactory progress, the Secretary shall notify the ~~district~~ supervisory union that, in the ensuing school year, the Secretary shall withhold 10 percent of the ~~district's~~ supervisory union's special education expenditures reimbursement pending satisfactory compliance with the plan.

(2) If the district fails to make satisfactory progress after the first year of withholding, 10 percent shall be withheld in each subsequent year pending

satisfactory compliance with the plan; provided, however, before funds are withheld in any year under this subdivision (f)(2), the ~~district~~ supervisory union shall explain to the State Board either the reasons the ~~district~~ supervisory union believes it made satisfactory progress on the remediation plan or the reasons it failed to do so. The State Board's decision whether to withhold funds under this subdivision shall be final.

(3) If the ~~district~~ supervisory union makes satisfactory progress under any subdivision of this subsection, the Secretary shall release to the ~~district~~ supervisory union any special education expenditures reimbursement withheld for the prior fiscal year only.

(g) Within 10 days after receiving the Secretary's notice under subdivision (f)(1) of this section, the ~~district~~ supervisory union may challenge the Secretary's decision by filing a written objection to the State Board outlining the reasons the ~~district~~ supervisory union believes it made satisfactory progress on the remediation plan. The Secretary may file a written response within 10 days after the ~~district's~~ supervisory union's objection is filed. The State Board may give the ~~district~~ supervisory union and the Secretary an opportunity to be heard. The State Board's decision shall be final. The State shall withhold no portion of the ~~district's~~ supervisory union's reimbursement before the State Board issues its decision under this subsection.

(h) Nothing in this section shall prevent a ~~school district~~ supervisory union from seeking and receiving the technical assistance of Agency staff to reduce its special education spending.

*§ 2975. UNUSUAL SPECIAL EDUCATION COSTS; FINANCIAL
ASSISTANCE*

The Secretary may use up to two percent of the funds appropriated for special education expenditures, as that term is defined in subsection 2967(b) of this title, to directly assist ~~school districts~~ supervisory unions with special education expenditures of an unusual or unexpected nature. These funds shall not be used for exceptional circumstances that are funded under section 2963a of this title. The Secretary's decision regarding a ~~district's~~ supervisory union's eligibility for and amount of assistance shall be final.

Sec. 2. 16 V.S.A. § 4002 is amended to read:

§ 4002. PAYMENT; ALLOCATION

(a) State and federal funds appropriated for services delivered by the supervisory union and payable through the Agency shall be paid to the order of the supervisory union and administered in accordance with the plan adopted under subdivision 261a(4) of this title. Funding for special education services under section 2969 of this title shall be paid to the districts and supervisory unions in accordance with that section.

** * **

** * * Study of Funding for Special Education * * **

Sec. 3. STUDY OF FUNDING FOR SPECIAL EDUCATION

(a) Study. The Agency of Education shall contract for a study of special education funding and practice. The study shall evaluate the feasibility of implementing various models of funding for special education in Vermont, including a census block model of funding and variations of this model, as the contractor deems appropriate, including the advantages, disadvantages, and policy considerations. The study shall develop a special education funding model recommendation for Vermont, which shall be designed to provide incentives for desirable practices and stimulate innovation in the delivery of services and shall take into account any factors the contractor determines relevant. The contractor shall conduct its evaluation and develop its recommendation in collaboration with the Agency of Education and, as directed by the Agency of Education, with interested superintendents, special education administrators, school business and administrative staff, and special education staff from the institutions of higher education and other stakeholders, including parents and family-based organizations. The contractor shall present its findings and recommendations to the General Assembly and the Agency of Education by December 15, 2017.

(b) Funding. The Agency of Education shall allocate out of its fiscal year 2017 budget a sum of up to \$90,000.00 to provide funding for the purposes set

forth in this section. Any application of funds for the purpose of administrative overhead shall be capped at ten percent of the total sum allocated pursuant to this section.

** * * Effective Dates * * **

Sec. 4. EFFECTIVE DATES

Sec. 3 and this section shall take effect on July 1, 2016. Secs. 1 and 2 shall take effect on July 1, 2017.

** * * Consulting Services on the Delivery of Special Education Services * * **

*Sec. 4. CONSULTING SERVICES ON THE DELIVERY OF SPECIAL
EDUCATION SERVICES*

(a) Consulting services contract. The Agency of Education shall contract with a consulting firm meeting the criteria set forth in subsection (c) of this section for the provision of special education consulting services to up to 10 supervisory unions, supervisory districts, or unified union school districts. The Agency, in consultation with the consulting firm and interested districts and supervisory unions, shall select, as member districts and supervisory unions for the study, at least three existing supervisory unions or supervisory districts with an average daily membership of 1,500 students or more and at least three unified union school districts formed pursuant to 2015 Acts and Resolves No. 46. Selected districts and supervisory unions shall provide an equivalent match equal to 50 percent of the cost of the consulting firm's

services, with the other 50 percent being funded by the appropriation provided in this section; provided, however, that to the extent the Agency is able to allocate additional funding, it can decrease the funded percentage for districts or supervisory unions that the Secretary deems in need of additional funding. The financial contribution by districts or supervisory unions may be from transition grants or other appropriate grant funding and may, at the discretion of the district's or supervisory union's board of directors, be allocated across the district's or supervisory union's 2017 and 2018 fiscal years.

(b) Nature of consulting services and reporting.

(1) For each of the selected districts and supervisory unions, the consulting firm shall review current practices for the delivery of special education services against research-informed practices, and shall make recommendations to inform improved delivery of special education services in an efficient and cost-effective manner.

(2) The consulting firm shall present a final report with recommendations on the delivery of special education services to the selected school districts, the General Assembly, and the Agency of Education on or before October 1, 2017. The Agency shall share this final report with all districts and supervisory unions. This report shall, on a statewide basis based on the consultant's experience with the selected districts and supervisory unions, identify current practices for the delivery of special education services

against research-informed practices, and shall make recommendations to inform improved delivery of special education services in an efficient and cost-effective manner. The report shall identify patterns and differences in special education delivery practices across the State. The consulting firm shall provide to the Agency of Education any and all research and data compiled during the course of its work pursuant to this section.

(c) Selection of consulting firm. The Agency of Education shall contract with a consulting firm which:

(1) has experience working directly with Vermont school districts and with school districts across the country to raise achievement and manage cost in special education;

(2) uses national special education staffing benchmarking from at least 1,000 school districts covering at least 10 million students, and web-based schedule sharing technology that captures how individual staff members use their time, including duration, location, and group size;

(3) has conducted and published primary research on cost-effective strategies for raising achievement of struggling students, both with and without special needs; and

(4) is recognized as a national expert and published author on raising special education achievement in a cost-effective manner.

(d) Appropriation. Notwithstanding any provision to the contrary in 16 V.S.A. § 4025, the sum of \$75,000.00 is appropriated from the Education Fund for fiscal year 2017 to the Agency of Education, which the Agency shall administer in accordance with this section, and any unused funds shall revert to the Education Fund. In addition, to the extent that there is a reversion from fiscal year 2016 to fiscal year 2017 of unused special education funds in the Agency's budget, the Agency may use up to \$100,000.00 of these funds, if available, to administer in accordance with this section.

** * * Effective Dates * * **

Sec. 5. EFFECTIVE DATES

Secs. 3, 4, and this section shall take effect on July 1, 2016. Secs. 1 and 2 shall take effect on July 1, 2017.